IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.984/2002

Chhagnaram S/o Sultan Singh Meena
Versus
State of Rajasthan through P.P.

Date of Judgment :::: 24th of January, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Shiv Charan Gupta, Counsel for accused-appellant
Smt. Nirmala Sharma, P.P., for the State
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By the Court:-

The Additional Sessions Judge (Fast Track), Jhunjhunu, vide its judgment and order dated 22.7.2002, in Sessions Case No.83/2001 (17/99) convicted and sentenced accused-persons Heeralal and Chhagnaram as under:-

S.No.	*Accused*	*Under Section and Sentence Awarded*
1.	Heeralal AND Chhagnaram	Under Section 307/34 IPC 10 years R.I. And fine of Rs.2000/- (in default, three months S.I.)

S.No.	*Accused*	*Under Section and Sentence Awarded*
	Heeralal AND Chhagnaram	Under Section 498-A, IPC 3 years R.I. And fine of Rs.500/- (In default, 1 month's S.I.) Under Section 323/34 IPC One Year's RI and fine of Rs.500/- (In default, 1 month's S.I.) Under Section 342 IPC One Year's RI and fine of Rs.500/- (In default, 1 month's SI)

All the sentences were ordered to run concurrently.

Being aggrieved with the aforesaid conviction and sentence, both the accused-persons, namely, Heeralal and Chhagnaram preferred the present criminal appeal under Section 374 of the Code of Criminal Procedure.

During pendency of the appeal, the accused-appellant Heeralal died and this Court, vide order dated 18.10.2005, deleted his name from the array of the appellants, meaning thereby his appeal was deemed

to have been dismissed under Section 394, Cr.P.C., therefore, the present appeal remains only on behalf of accused Chhagnaram S/o Sultan Singh Meena.

The learned counsel for the accused-appellant, in view of the statement of injured PW-1 Ramdulari, medical-report of injured (Exhibit P-8) and the statement of Dr. M.G. Gupta (PW-8), did not press the appeal on merits and, in my view, the learned counsel for the appellant is right in not pressing the appeal on merits in view of the overwhelming prosecution evidence against appellant Chhagnaram in respect of the offences for which he has been convicted by the trial court.

The learned counsel for the appellant only contended that the accused-appellant has already remained in jail for a period of five years and fifteen days till now during the trial as well as after his conviction by the trial court, therefore, his sentence of ten years RI under Section 307/34, IPC, may be reduced to a period of sentence of imprisonment already undergone by him. In support of his contention, he referred to the following decisions:-

1. Bappa @ Bapu Vs. State of Maharashtra – AIR 2004 SC 4119

2. Bhoop Ram Vs. State of Rajasthan – 1988 WLN (UC) 44

3. Surain Singh Vs. State – 1989 RCC 49

4. Ram Pratap Vs. State – 1987 R.C.C. 324

5. Gulam Dastgeer Vs. State – 1994 (2) W.L.C. (Raj.) 607

6. Prahlad Ram Vs. The State of Rajasthan – 1999 (1) W.L.C. (Raj.) 617

The learned counsel for the respondent contended that looking to the facts and circumstances of the present case, the sentence of imprisonment should not be reduced, or in alternative the amount of fine may be enhanced, which may be paid to the injured PW-1 Ramdulari.

I have considered the submissions of learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

So far as the merits of the case are concerned, the same are not being discussed as the learned

counsel for the appellant, looking to the overwhelming prosecution evidence, did not challenge the same.

So far as question of reduction of sentence of imprisonment under Section 307/34, IPC, is concerned, there is no dispute in between both the parties that the accused-appellant has already remained in jail for about five years and fifteen days and in case the period of remission is also included in it then this period may come to approximately six years.

In Bappa @ Bapu Vs. State of Maharashtra (Supra) the Hon'ble Supreme Court reduced the sentence of ten years RI to a period of five years RI under Section 307, IPC. Para 11 of the judgment is reproduced as under:-

> “11. The residual question is whether a sentence of 10 years rigorous imprisonment is justified. No doubt, as noticed by the trial Court and the High Court, injuries inflicted on the victim were of serious nature. But considering the background facts and peculiar features of the case, custodial sentence of 5 years rigorous imprisonment would meet the ends of justice.”

In Bhoop Ram Vs. State of Rajasthan (Supra) this Court reduced the sentence of 7 years RI under Section 307 IPC to 5 years RI.

In Surain Singh Vs. State (Supra) this Court reduced the sentence under Section 307 IPC to a period of 4 years already undergone by the appellant and also to pay a fine of Rs.1000/-.

In Ram Pratap Vs. State (Supra) this Court reduced the sentence of imprisonment under Section 307 IPC to 5 years RI.

In Gulam Dastgeer Vs. State (Supra) this Court reduced the sentence of 4 years RI to a period of two years RI under Section 307 IPC.

In Prahlad Ram Vs. The State of Rajasthan (Supra) this Court reduced the sentence of 1 year's SI under Section 307 IPC, to 45 days imprisonment already undergone by the accused.

After considering the nature of charge and the statement of the injured PW-1 Ramdulari and the injury-report (Exhibit P-8), I think it fit and proper

that a period of 5 years and 15 days RI already undergone by the accused-appellant with fine, which is increased to Rs.12,000/- (Rupees twelve thousand), will meet the ends of justice.

Consequently, the appeal is partly allowed. The conviction and sentence of accused-appellant Chhagnaram under Sections 498-A, 323/34 and 342 of the IPC is maintained. The conviction of the appellant under Section 307 read with Section 34 of the IPC is also maintained, but his sentence of imprisonment under this Section is reduced to a period of RI already undergone by the accused-appellant with a fine of Rs.12,000/- (Rupees twelve thousand); in default of payment of fine, to further undergo two months SI.

Two months' time is allowed to the accused-appellant to deposit the amount of fine failing which the trial court shall take necessary steps for sending him into jail to serve out the sentence of imprisonment awarded in lieu of default of payment of fine. A sum of Rs.10,000/- (Rupees ten thousand) out of the amount of Rs.12,000/- of fine, shall be paid to injured PW-1 Ramdulari, as and when the same is deposited by the appellant.

The appellant is in judicial custody, therefore, he may be released forthwith, if his custody is not required in any other case.

(Narendra Kumar Jain) J.

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